UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1995/70
11 November 1994

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-first session
Item 12 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994

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INTRODUCTION

1. In accordance with the mandate entrusted to him by the Commission on Human Rights in resolution S-3/1 of 25 May 1994, the Special Rapporteur made a third visit to Rwanda from 14 to 25 October 1994. The purpose of this visit was to update, supplement and clarify the information contained in the first two reports published on 20 June 1994 (E/CN.4/1995/7 and Corr.1) and on 12 August 1994 (E/CN.4/1995/12) respectively.

2. In the course of his visit, the Special Rapporteur:

(a) Travelled to Kigali, Kibungo, Butaré, Gisenyi and Cyangugu (Rwanda); to Goma and Bukavu (Zaire); to Benaco (United Republic of Tanzania); to Brussels and to Paris;

(b) Visited the refugee camps at Goma, Bukavu and Benaco, the camp for displaced persons at Kibeho in the former Turquoise zone, the Nyarubuye parish, the Bishopric, parish and small seminary of Nyundo, the Gisenyi cemetery, Chamvuzo village and Kigali prison;

(c) Held talks with:

(i) The following political personalities of Rwanda:

Mr. Paul Kagamé, Vice-President of the Republic and Minister of Defence, Mr. Faustin Twagiramungu, Prime Minister, Mr. Seth Sendashonga, Minister of the Interior and Mr. Alphonse-Marie Nkubito, Garde des Sceaux, Minister of Justice;

(ii) High-placed officials of bodies comprising the United Nations system, namely, Mr. Shahryar Khan, Special Representative of the Secretary-General in Rwanda, Major-General Claude Toussignant, Force Commander of the United Nations Assistance Mission to Rwanda (UNAMIR), and representatives of the United Nations High Commissioner for Refugees (UNHCR), of the United Nations Development Programme (UNDP) and of the United Nations Rwanda Emergency Office (UNREO);

(iii) Foreign personages: Mr. Vandenbroecke, Minister of Foreign Affairs of Belgium; the Apostolic Nuncio; the Ambassador of the United States in Kigali; the Conseil permanent de la Francophonie, a branch of the Cultural and Technical Cooperation Agency, Mr. Jean Gol, the Swiss Chargé d'affaires in Rwanda, Professor Filip Reyntjens, former Belgian Minister of State of Antwerp University (Belgium) and Mr. Eric Gillet and Mr. Bavo Cool, Belgian lawyers;

(iv) Representatives of non-governmental organizations, as well as Rwandese and foreign journalists (press conference).

3. The Special Rapporteur wishes to express his sincere thanks to all of the above and in particular his gratitude to the Special Representative of the Secretary-General and the Commander of UNAMIR who provided him with all necessary assistance and facilitated his visit through their logistical support. Thanks also go to Mr. William Clarance, Chief of the Human Rights Field Operation in Rwanda and his team of human rights observers who, internal contradictions and difficulties notwithstanding, displayed a spirit of devotion and dynamism.

4. This on-the-spot visit enabled the Special Rapporteur once again to take stock of the situation prevailing in Rwanda. The conclusion he reached was that the three basic concerns of this country are the problems of genocide, insecurity and the return of refugees and displaced persons.

I. GENOCIDE

5. The inhabitants of Rwandese towns are returning gradually and quite rapidly. Economic activity is also resuming. The dead are being mourned but there is rejoicing whenever a lost relative, a brother, a sister or a child is found. It would appear that the major concern of the Rwandese is knowing whether those responsible for the genocide - "génocidaires" as they are called in the country - will be tried and punished. They wonder what is keeping the United Nations from establishing an international tribunal, and in this context tongues become loosened. But although the existence of genocide has been confirmed, there is considerable delay in conducting the investigation.

A. Confirmation of the facts

6. The various elements constituting genocide appear to be increasingly confirmed by the on-the-spot investigation that has been carried out. Such elements include the discovery of mass graves, the existence of evidence and proof indicating that the massacre of the Tutsi was planned and the identification of those primarily responsible.

1. The discovery of mass graves

7. Several mass graves have been found throughout the country as a result of the various investigations carried out - there being one or two in each commune. A provisional list of about 50 mass graves has thus been drawn up, with more than 6 in towns such as Gitarama and Cyangungu. The Special Rapporteur and several members of the observer team were personally able to identify several mass graves, namely, at Chamvuzo, Nyundo, in the Gisenyi communal cemetery and in Cyangungu. At Nyundo, three septic tanks were later used to inter those massacred, who numbered over 300. The inhabitants of Nyarubuye and the surrounding area were not, however, entitled to burial. The bodies of some lie strewn about the courtyard and alleys of the parish and others are piled one upon the other in the classrooms of the parish school and in the church, while yet others were discovered in the neighbouring village, some having had their hands bound behind their backs before being executed. Skeletons of persons of all ages abound: women, men, old persons and even babies. The senses - sight, smell and touch - are all revolted by the spectacle.

2. Proof or evidence indicating that the genocide of the Tutsi was planned

8. Since the question of genocide was discussed at sufficient length in the preliminary report it will not be dealt with in detail below. Attention is simply drawn to the following:

(a) The existence of several audio cassettes of broadcasts by Radio Rwanda and Radio Television des Mille Collines which are available and will be placed at the disposal of the courts and tribunals as proof of incitement to the extermination of the Tutsi;

(b) The issue by the authorities of unequivocal orders for the massacre of the Tutsi.

9. Concordant and reliable testimony indicate that these orders, carried out by the interahamwe ("those who attack together") and the inhabitants themselves can be traced back to the Government via local political and administrative authorities. A militiaman from Kibungo explained to a priest who tried to persuade him not to take part in the massacres that he liked his job as a taxi (moto) driver and did not want to be soldier. But, he added, "If I am told to kill, I kill the enemies of the people; they are bad". Another person, a Catholic from Kabgayi parish who was about to kill people in a church and who was asked by the priest what had happened to his "Christian way of life", replied: "You're not with it, Father. We're carrying out a plan". And in reply to the question what he would get out of the plan, he said without beating about the bush: "Salvation". The Prefect of Cyangungu, who was unable to provide protection for the Tutsi and who was asked by the Bishop of the Diocese to open up the frontiers, said that he could not allow the Tutsis to flee towards the frontier with Zaire since he had received "orders from above". The lieutenant who directed the attack against the Bishopric of Kibungo on 15 April 1994, following the massacre of over 1,200 Tutsi by militiamen and soldiers, reassured the Bishop and a few priests whom he had spared that "It's finished. We've sent a message to Kigali saying that the operation was a success". In other words, he had informed Kigali that everyone had been exterminated at Kibungo.

10. By far the most topical example is offered by the speech of Mr. Sindikubwabo, the President of the Interim Republic of Rwanda, on the occasion of the installation of the Prefect of Butaré on 19 April 1994. In this speech, which has been confirmed by a number of reliable sources, he addressed an appeal to the inhabitants of Butaré, stating that they should not act as they had in the past - a past characterized by apathy - and urged them to engage in a manhunt. "You, people of Butaré, you are adopting a 'its none of your business attitude'; the enemies are among you, get rid of them", he is said to have declared in kinyarwanda. And later on he added: "If you cultivate a field and then fail to weed it, what you have done is pointless". He is said to have concluded with "Analyse each one of my words and you will discover the meaning of the message I am conveying to you".

3. Identification and prosecution of persons primarily responsible for the genocide

11. Although the identification and even the prosecution of those responsible for carrying out such orders raise difficulties owing to the number involved, this is not true of those who issued the orders, namely, those primarily responsible against whom "sufficient charges" have been brought. Abundant and concordant testimony is available on the part they played, and each witness possesses a list which sometimes classifies the perpetration of genocide in hierarchical order. Proof is also available. On the other hand the prosecution of those primarily responsible raises a problem namely, that of the tribunals before which they should be brought, and in particular the international tribunal. The victims, the wounded and those entitled to compensation, are becoming impatient. Apart from the actual establishment of the international tribunal, divergencies of views might well emerge between the United Nations and the Rwandese Government concerning its seat, the detention of the accused or those sentenced and the penalties imposed.

12. The Rwandese Government would like the tribunal to sit in the place where the massacres were perpetrated, namely, at Kigali in Rwanda. Will the United Nations accede to its wishes?

13. The same problem arises in connection with the place of detention which, in the case of those who carried out the orders, would probably be Rwanda and, in the case of those who issued the orders, outside the national territory. The Rwandese Government is questioning the justification of this kind of "double standard" discrimination.

14. Lastly, with respect to punishment, the Rwandese Government, under pressure from national public opinion, is in favour of the strict application of the Rwandese Criminal Code which provides for capital punishment, whereas the United Nations, following the example of the Statute of the International Tribunal for the former Yugoslavia (S/25704) adopted by the Security Council in resolution 827 (1993) of 25 May 1993 and in accordance with the Statute of the International Tribunal for Rwanda (S/1994/1168), contained in Council resolution 955 (1994) of 8 November prescribes life imprisonment as the maximum sentence. In this context and apart from the discrimination made between the two categories of persons, the paradox of punishing those who carried out the orders more severely than those who issued them is to be deplored. Nor is it out of the question, that, as a result of certain events, those who issued the orders might be released a few years later. It is no doubt because these various divergencies of views and contradictions have not been reconciled that the Rwandese Government has proposed to the Security Council, as reported in Le Monde of Tuesday, 1 November 1994, that international jurisdiction should be replaced by a national tribunal "enjoying international assistance and the death penalty instead of life imprisonment ...".

B. Delay in carrying out the investigation

15. The investigation, which should be conducted on the spot by human rights observers in accordance with paragraph 21 of Commission on Human Rights resolution S-3/1 of 25 May 1994, has not yet really begun. This is clear if a

distinction is made between two different periods. The first is characterized by the absence of observers and the second by the presence of undeployed observers.

1. Absence of observers in the field

16. The Special Rapporteur's first two visits, which took place from 9 to 20 June 1994 and from 29 to 31 July 1994 respectively, do not call for any particular comment, since at that time the investigation proper had not yet begun. The first two reports were prepared on the basis of documents and testimony provided by officials of intergovernmental and non-governmental organizations, as well as a few survivors of the massacres. Moreover, the Special Rapporteur refrained from questioning displaced persons or refugees in the camps for fear that reprisals would be taken against them. This period was that of the war and the cease-fire. It lasted for two months (June and July 1994) and observers had not yet been deployed, mainly because the war was still raging. It was at the end of the armed conflict that the deployment of observers was envisaged.

2. The presence of undeployed observers

17. Following his second visit, the Special Rapporteur proposed, in accordance with a strategy described in the second report, the deployment of 150 to 200 observers for the period of national reconstruction. The United Nations decided upon 147, a figure agreed with the Government and corresponding to the number of communes in the country.

18. On Saturday, 22 October 1994, 37 of the 147 agreed upon had taken up their duties at Kigali. The fact that the observers - the first four - began arriving at Kigali at the beginning of August 1994 gives an indication of the difficulties encountered in organizing this mission. On the same date, the observers present had not yet been deployed in the field.

19. It should, however, be mentioned that spot investigations have been conducted by human rights observers as well as by the specialized investigation team, although the general deployment plan will be embarked upon only on 22 October.

20. The reason usually given is the absence of material and logistical facilities, namely, the lack of liaison vehicles and particularly communication radios that are vital for the security of the observers. Moreover, according to the United Nations Centre for Human Rights, "only provisional instructions have been received in respect of the field operation during the initial phase, based on similar directives applied during United Nations operations in the former Yugoslavia, El Salvador and Haiti". And it will only be after the arrival of the chief of the operation at Kigali on 10 September 1994 and when the head of the specialized investigation team assumes his functions that "complete instructions for field personnel, based strictly on the experience acquired during the first few weeks of the operation" will be drawn up. However, to these reasons must be added others reflecting personality clashes and the vagueness of the instructions provided

21. These various reasons may well explain why two observers have resigned and, in part, the failure of two other observers to renew their contracts. There is nothing to say that yet other observers may resign, although the Special Rapporteur, during his third visit, tried to persuade them not to do so. The delay in the deployment of observers is all the more unfortunate in view of the insecurity that is becoming increasingly apparent in Rwanda.

II. INSECURITY

22. Insecurity, which has already been condemned in the second report, is again on the increase. As a consequence of the armed conflict and particularly the massacres that have taken place, it is a source of human rights violations taking the form of serious violations of property rights, the right to personal safety and the right to life.

A. Violations of property rights

23. Violations of property rights consist in the illegal occupation of property - a problem to which the Government is trying in vain to find a solution.

1. Illegal occupation of property

24. On returning to Rwanda, many refugees illegally occupy houses - dwelling houses or business premises - as well as land abandoned by its owners or tenants who have fled. The situation is particularly complex in that this return flow is of an anarchical nature and that the majority of these refugees constituted the Diaspora of the 1960s. According to well-informed sources, it appears that over half of the property of the Hutu is occupied by the new repatriates. This is the case in Kigali as well as in Rusumo commune. The most telling example is offered by the Massaka sector in the vicinity of Kigali, where 4,000 of the 5,000 inhabitants, namely, 80 per cent of the total population, are new arrivals.

25. The new arrivals settle in without thinking that the owners might return, so that when they do and claim their property rights, conflicts arise and in many cases assume unexpected proportions. Since they belong to the Hutu ethnic group, they are reported to the military as having participated in the genocide or in cruel and inhuman treatment or summary executions. The Government has informed the Special Rapporteur that it is concerned by this delicate problem and the Prime Minister, who has pointed out that it is difficult to evict and rehouse the refugees, recognizes that conflicts "are being resolved in an increasingly violent manner".

2. Solutions to the problem

26. The Government of Rwanda has taken the following steps to solve the sensitive problem of the illegal occupation of the property of persons who fled by persons who have returned, which is primarily the result of the shortage of dwellings and the large-scale and spontaneous return of refugees:

(a) Only refugees who have been out of the country for less than 10 years may recover their right of ownership; they are the real owners of the property they abandoned during the armed conflict and the massacres; it is stressed that this principle is in keeping with the Arusha Agreements;

(b) Refugees who have been outside the country for more than 10 years may temporarily occupy abandoned and vacant houses, on the understanding that such occupation does not create any right of ownership; they are in a precarious and revocable situation;

(c) The property of persons responsible for the genocide will be seized and sold to establish a fund for the compensation of the victims;

(d) An Inter-Ministerial Committee presided over by the Minister of the Interior has been set up to implement these measures.

27. The Minister of the Interior recognizes that this Committee faces resistance by many persons served with eviction notices. This resistance is all the stronger in that, in some cases, it is put up by officers of the Rwandese Patriotic Army (APR). It explains why, according to the Minister, the Committee can be successful in only 30 per cent of cases. He therefore intends to use a gendarmerie unit to have "the notices served by force whenever the occupants have shown obvious signs of bad faith".

28. The measures adopted are still not enough because they simply shift problems instead of solving them. The eviction of illegal occupants whether they like it or not is tantamount to inviting them to take over other unoccupied houses, shops or plantations, where they can expect the same sequence of events to take place. In order to put an end to this awkward and uncertain situation, the Special Rapporteur proposed that a national policy to take care of former refugees should be adopted and implemented on the basis of the Arusha Agreements and under the auspices of the Government of Rwanda, the Office of the United Nations High Commissioner for Refugees and the Organization of African Unity. The formulation of a plan of this nature requires the international community's support within the shortest possible time in order to put an end to other violations of human rights.

B. Violations of personal safety

29. The arbitrary arrests and detentions committed in Rwandese territory are justified by the shortage of resources.

1. Arbitrary arrests and detentions

30. Insecurity is also reflected in violations of personal safety which primarily take the form of arbitrary arrests and detentions. The Special Rapporteur has been informed of several cases of searches and particularly of arbitrary arrests and detentions. He was able to confirm this information for himself when he visited Kigali prison, where he met several thousand prisoners, including men, women, children and elderly people. He counted about 40 children under 15 years of age, including several as young as 12.

31. These persons had been arrested and detained in violation of basic procedural rules. No arrest warrant is issued and the persons concerned are kept in places of detention, especially in police stations, for longer than the lawful period of police custody, which is 48 hours, renewable once. What is worse, persons released by the judicial authorities for lack of evidence are arrested again by soldiers and detained in police stations or barracks.

32. Conditions of detention are extremely rudimentary. Prisoners are piled in practically on top of one another. The hunt for the "génocidaires" has filled Rwanda's prisons. On 18 October 1994, ICRC counted over 7,000, including 800 in Gitarama, 2,000 in Butaré and 4,200 in Kigali. The result is overcrowding. For example, Kigali prison, which has room for 1,500 prisoners, had 4,305 on Friday, 21 October 1994. The situation is likely to get even worse because large numbers of persons are being admitted to prison, whereas few, if any, are leaving. In Kigali, an average of between 50 and 100 persons are admitted every day. The prison also does not have enough beds and many inmates therefore have to sleep on the floor. There is no open-air area. Prisoners have only one skimpy meal a day consisting of no more than maize and beans.

2. The lack of resources

33. The Government of Rwanda gives more or less connected reasons both to justify the arrests and detentions and to explain the irregularities that characterize them. There are three such reasons.

34. The first is the need to prosecute the persons responsible for the genocide so that they do not escape justice. We are told that the Government and the urban population are firmly determined to prosecute the perpetrators. The Government wants to punish those responsible for the massacres at any price and does not wish in any way to countenance impunity, which is a recurrent cause of the successive waves of massacres in Rwanda. This is why it informed the Special Rapporteur on several occasions that the "génocidaires" are being arrested pending the establishment of the international tribunal and the reorganization of Rwandese judicial machinery. Moreover, the urban population is putting strong pressure on the authorities to make sure that the crimes against humanity that have been committed will not go unpunished because otherwise they would have to take revenge themselves.

35. The second reason is the need to protect the persons concerned against reprisals by the victims. Prisons and other places of detention are, we are told, safe places for protecting the lives of persons who have been reported to be responsible for the massacres, but who do not seem to have been informed that this is the purpose of their detention and obviously do not have any choice in the matter.

36. The third reason is the lack of administrative structures and judicial personnel. The Government says that it is aware of violations of the right to personal safety and complains of the acute shortage of the basic elements needed to ensure the smooth operation of the criminal investigation police and the law. For example, it stresses that only 27 of the more than 150 persons employed by the Ministry of Justice are at their posts, after having escaped

death or exile. It also points out that the lack of training of military personnel and their ignorance of legal procedures are causes of human rights violations. These reasons also explain violations of the right to life.

C. Violations of the right to life

37. Violations of the right to life are the result of summary executions, which are said to be justified by revenge taken by the victims.

1 Summary executions

38. The Special Rapporteur has been informed of several cases of summary executions and even massacres and involuntary disappearances of persons for which civilians and, in particular, APR soldiers are alleged to be responsible. This information was supplied to him both by the relatives of victims and by humanitarian non-governmental organizations. They refer not only to thousands of anonymous deaths, but also to lists of persons who are few in number, but mentioned by name.

39. The Special Rapporteur personally went to Chamvuzo (Butaré prefecture) to identify a mass grave containing almost 50 bodies for which APR is alleged to be responsible. Many rumours bordering on disinformation are, of course, circulating in the refugee camps, to the effect that thousands of Hutu have been massacred. APR soldiers and civilians are indeed guilty of massacres of Hutu in various places in Rwanda. Investigations are being conducted.

40. Persons suspected of having taken part in the massacres have been executed either by the civilian population itself, by soldiers at the civilian population's request or on their own initiative. Concordant and reliable testimony describes nearly the same scenario. Men, children and elderly people have been accused of being traitors and massacred following so-called information meetings convened by APR elements. Massacres have allegedly taken place in various parts of the country, and particularly in the south. In addition to the mass graves for which APR is responsible we therefore have all those for which the militia and the Rwandese Armed Forces are responsible, so that it is now difficult to tell them apart. Investigations are under way to clarify the situation and determine where responsibility lies.

2. Private revenge

41. The Government presents reasons and describes the measures it has taken in explanation of recently reported massacres and thus relieves itself of responsibility. Two reasons are given.

42. The main reason is private revenge taken by Tutsi civilians and by soldiers. We are told that, in Rwanda, all those who live on the same hill know one another and, in many cases, the executioners operated openly and killed people in full view of everyone because they were convinced that they enjoyed impunity, which has become a tradition. Similarly, soldiers who had joined the ranks of the Rwandese Patriotic Front (RPF) saw their relatives executed simply because they had joined up. And they, in turn, carry out acts of reprisal.

43. The second, subsidiary, reason is that, in the second phase of the war, the RPF hastily recruited juvenile delinquents and even former militiamen on what was not a very selective basis. It is a great temptation for these young persons who have tasted victory and who are not receiving any pay to seize other people's property, killing them if necessary. Officers also abuse their powers by unlawfully occupying houses at gunpoint. The question is thus whether the RPF really controls all its APR elements.

44. In view of this situation, the Government has adopted a number of measures, including:

(a) The establishment of a military police force commanded by a colonel who is responsible for supervising and arresting delinquent military personnel;

(b) The quartering of undisciplined soldiers in a training camp;

(c) The adoption of a decree embodying the Code of Military Justice, which provides for the establishment of two competent courts to try military personnel: the Court Martial and the Military Court. The latter's decision may be appealed under the conditions provided for by Rwandese law. The Government of Rwanda has already arrested military personnel, including officers (majors and lieutenants). A fax sent to the Special Rapporteur by the Minister of Justice refers to 100 members of the military who have been arrested, and lists 20 cases in which "the investigation has been completed".

45. It may be added that the United Nations is helping the Government of Rwanda to organize a new national police force intended to guarantee security in the country. In a favourable response to an urgent request by the Government of Rwanda, UNAMIR has started a training programme for 103 police cadets who were chosen by the Government and who will be trained in normal police work and investigation procedures. There is a programme developed by the Secretary-General in his progress report of 6 October 1994 on the United Nations Assistance Mission for Rwanda (S/1994/1133).

46. It is obvious that these measures are not enough in themselves to establish security in Rwanda. They will therefore have to be expanded to provide comprehensive assistance covering both national reconstruction and legal assistance lato sensu. These measures, taken together, may also help to promote the return of refugees.

III. THE RETURN OF REFUGEES AND DISPLACED PERSONS

47. The return of refugees and displaced persons to Rwanda and the hills where they live continues to be the international community's main concern. Their return, which has been slowed down by considerable pressure on the part of the former authorities, nevertheless seems to imply new solutions.

A. The slow-down in the number of returns

48. The refugees' situation has persisted too long. What was temporary is becoming permanent despite difficult living conditions, which have improved only slightly (mainly in terms of health and nutrition).

49. Although the international community has been making untiring efforts to ensure the repatriation of refugees and displaced persons, the situation has hardly changed. In October 1994, UNHCR estimated that there were about 1.5 million Rwandese refugees in neighbouring countries, including 850,000 in North Kivu, 300,000 in South Kivu (Zaire) and 460,000 in the United Republic of Tanzania. It should be mentioned that at least 50,000 refugees have died of diseases and particularly the cholera epidemic that spread throughout the camps. In addition, the same number of persons was displaced inside Rwanda. The Kibeho and N'Dago camps for displaced persons had a population of 60,000 and 40,000 respectively.

50. These numbers are levelling off as a result of the slow-down in repatriations, in contrast to the large-scale repatriations that took place immediately after the cease-fire entered into force. For example, in the Prefecture of Giseny in UNAMIR sector No. 5, there were 3,368 returnees from Zaire on 27 July 1994. On 28 July, 4,233 persons returned by the same border posts. On 29 July, however, there was a sharp drop in the number of repatriations, to 1,592; and on 18 August it fell to 922 and then to 268 on 6 October. So that whereas the number of repatriations in the sector amounted to 12,433 for the last five days of July (an average of 2,486 a day), it dropped to 36,600 (an average of 1,180 a day) in August, to 32,925 (an average of 1,097 a day) in September and to 10,337 (a daily average of 607) in the first half of October. This decline in the number of returning refugees became noticeable and significant on 17 September and even sharper in October.

51. There are two factors pulling in opposite directions. The first is that most of the refugees who returned to Rwanda during the same period comprised the old Tutsi Diaspora and are probably not taken into account in the refugee figures. The second is that the figures do not include arrivals by dugouts or other clandestine means.

52. Moreover, there have also been far fewer arrivals than departures. UNHCR reports that, from 8 to 14 September 1994 in the Goma area, there were 15,662 returnees and no new arrivals in the camps; from 15 to 21 September, 11,728 returnees as against 1,868 arrivals; from 22 to 30 September, 6,477 returnees as against 1,868 arrivals; and from 1 to 17 October, 12,106 returnees and 1,731 arrivals. In general, there has been if not a halt at least a gradual slow-down in departures from the camps, largely attributable to action by the former leaders.

B. Taking refugees hostage

53. The slow-down in repatriations of refugees and displaced persons may be due to various reasons. The first, which is immediately apparent, is the insecurity prevailing in Rwanda and, in particular, the fear of reprisals by the Tutsi. The second, which is closely related, is the fear of those who took part in the massacres of being executed by the RPF Government. Yet other reasons include the reassuring presence of United Nations observers and soldiers and the improvement in nutritional and health conditions.

54. However, the decisive - or at least most important - reason is that the refugees and displaced persons are being held hostage by the former political authorities, if the strong pressure being exerted on them "in an appropriate framework" is anything to go by.

1. Strong pressure

55. The former leaders, with assistance from local officials and military personnel and militiamen, continue to wage a vigorous campaign against the return of refugees and displaced persons to Rwanda and their hills. These authorities have no qualms about going from camp to camp making political speeches conveying two messages: disinformation and threats.

56. The first message tells refugees and displaced persons to remain in the camps rather than return to Rwanda for fear of being massacred by the Tutsi and the FPR Government. Then there are also reports of thousands of Hutu being massacred by the latter, and many people are prepared to testify to the fact. This disinformation campaign is so forceful that it is no longer possible to establish the truth, particularly bearing in mind the climate of insecurity that does indeed prevail in Rwanda.

57. The second message is in the nature of a permanent threat to refugees or displaced persons who expressly or tacitly indicate a desire to be repatriated. It is clear from this campaign that return will be possible only as a result of political negotiations entailing a general amnesty or, otherwise, a resumption of civil war to reconquer power. Those who do not take the advice offered and return would be at risk of being the first targets in the event of a reconquest of power.

58. These campaigns are organized thanks to the freedom of action enjoyed by members of the former Government team to engage in political activities contrary to international norms on Zairian territory. On 18 October 1994, for example, Mr. Jean Kambanda, ex-Prime Minister of the former Rwandese Government, visited refugees at the Mugunga (Goma) camp. He talked for more than an hour and a half with representatives of the refugees and then with the refugees themselves, who turned out in large numbers to listen to him. In substance, the message he conveyed was that the Rwandese Government in exile would shortly be starting discussions with the Government of Kigali. If that Government refused or stood in the way of a prompt solution, military action would be taken. Echoing the "Prime Minister", General Bizimungu stated on Saturday, 22 October 1994, that, if there were no negotiations between the new and the former Governments with a view to power-sharing, his troops would attack Rwanda. Unfortunately, those were no vain threats, since the former Government still has the means to pursue its policy.

2. An appropriate framework

59. The former Government team has been able to devise and set up in the various refugee camps a framework that is ideally suited for maintaining its pressure on the refugees and displaced persons. This framework is both institutional, political and administrative.

60. The institutional framework involves reconstituting in the camps the political and administrative structures that exist in Rwanda. These structures are mainly prefectures and communes. In other camps, there are even sectors. For instance, in the Kibumba camp at Goma, 8 of the 10 Rwandese prefectures are represented, together with several communes and a few sectors. Sometimes these reconstituted local units are even headed by the same local

authorities, prefects or prefecture chiefs and burgomasters. Thus, at Benaco in the United Republic of Tanzania, the Prefect of Kibungo has reportedly resumed his functions at the head of the prefecture.

61. These reconstituted prefectures, sectors and communes are undoubtedly structures enabling the former Rwandese authorities to control the civilian population. This control is all the more effective in that, in several camps, it is in practice they who are responsible for conducting a census of refugees.

62. The system of control thus devised and put into effect confers substantial or political and administrative powers on the former Government team through the intermediary of prefects or heads of prefectures, burgomasters and militiamen, particularly the power over food and the power to punish.

63. The power over food is tacitly recognized to belong to these local authorities when aid organizations relinquish to them the responsibility of ensuring the distribution of foodstuffs and other relief supplies. These authorities do not hesitate to use and abuse the power over food, as thus recognized, to punish those who do not go along with their policy and to divert stocks of food which are sold on the markets of the host countries.

64. The second power, which they quickly and forcibly acquired, is that of executing all those who do not fall in with their policy of keeping people in the camps. However, capital punishment is not confined to the political sphere but is also applied in connection with mere domestic matters, or indeed acts of vandalism. There is permanent insecurity in the camps. Not a day passes without a refugee being killed. The militiamen and armed bandits impose their own law, the law of arms. There are even persistent rumours of soldiers and militiamen being trained to attack the Rwandese State and to regain power there. The growing insecurity in the camps is the reason why the staff of UNHCR and humanitarian organizations no longer sleep there and why some of them threaten to withdraw. This necessitates the adoption of further measures to ensure security in the camps.

C. New solutions

65. To cope with the situation in the camps for Rwandese refugees and displaced persons, the United Nations and its various partners have envisaged new solutions to supplement those which already exist. Among them, the two main solutions that should be adopted are the separation of refugees from politicians and their repatriation.

1. The separation of refugees from politicians

66. The policy of separating refugees or displaced persons from politicians is advocated by the United Nations Secretary-General in his report of 6 October 1994 (S/1994/1133). The final report of the United Nations Technical Mission on the state of security in the camps gives details of this operation. To sum up, two main points may be mentioned:

(a) The distinctions made in the Secretary-General's report between Rwandese refugees, particularly in Zaire:

(i) The former leaders, comprising some 50 families lodged in villas at Bukavu;

(ii) An estimated 16,000 military elements of the former RGF who, together with their families, form a group of 80,000 persons;

(iii) The militiamen, who are difficult to enumerate, since they have mingled with ordinary refugees; and

(iv) The ordinary refugees, estimated at more than 1 million.

(b) The aim of the operation is to separate the vast majority of refugees from those who yesterday masterminded or participated in the massacres and today are taking the Hutu survivors hostage. The latter fall into the first three categories. It is nevertheless difficult to identify the third category - the militiamen - in order to separate them from the general population. This operation will be conducted through the formation of an international isolation or interposition force estimated at some 2,000 to 3,000 policemen, the imminent establishment of which has been announced by the Secretary-General. However, this force will doubtless have to begin by exploring peaceful solutions and encouraging repatriation, force being used only in cases of extreme emergency.

2. Repatriation

67. Voluntary repatriation of refugees is covered by the relevant provisions of various United Nations conventions and the Protocol of Agreement concluded at Arusha on 9 June 1993 between the Government of the Rwandese Republic and the Rwandese Patriotic Front on the repatriation of Rwandese refugees and the resettlement of displaced persons. This was the basis for the tripartite Agreement on the repatriation of Rwandese refugees from Zaire which was concluded at Kinshasa, Zaire, on 24 October 1994 by the Government of the Rwandese Republic, the Government of the Republic of Zaire and the Office of the United Nations High Commissioner for Refugees.

68. The preamble to the Agreement defines "the procedures and specific modalities for the voluntary repatriation and definitive reintegration in Rwanda of Rwandese refugees at present in Zaire, with the assistance of the international community and through UNHCR and, if necessary, with the support of other United Nations agencies and intergovernmental and non-governmental organizations".

69. It imposes a number of obligations on the contracting parties, specifically:

(a) Zaire, the country of asylum, undertakes to respect the relevant clauses of various United Nations and OAU conventions on refugees and to take appropriate measures to ensure that the latter are not unduly influenced in their decisions;

(b) Rwanda, the country of origin, undertakes to adopt political, administrative and possibly customs measures to ensure and facilitate the return and reintegration of refugees in dignity and security, as well as social peace and national reconciliation;

(c) The Office of the United Nations High Commissioner for Refugees undertakes to monitor and supervise any repatriation operation from start to finish, placing particular emphasis on the voluntary nature of the returnees' decision, as well as on their security and dignity.

70. It is to be hoped that this Agreement, which refers to the communiqué of 26 July 1994 marking the meeting between the President of the Rwandese Republic and the President of the Republic of Zaire, will not experience the same fate as that communiqué and will be respected.

IV. RECOMMENDATIONS

71. The Special Rapporteur deplores the tendency to use the current insecurity in Rwanda as a pretext for suggesting that genocide is commonplace and justifying inaction. To do so is to confuse cause and effect. It overlooks the fact that genocide is to a great extent the cause of insecurity. A correct diagnosis is essential if the right medicine likely to heal the Rwandese sickness is to be found. Without in any way neglecting existing human rights violations, they must be viewed in context and their sources identified so that efforts can be made to eliminate them before it is too late. Rapid, indeed very rapid, action is required if we are not to be the powerless spectators of a second war and further massacres. It is in order to avoid a disaster of this nature that the following recommendations, addressed respectively to the Rwandese Government, the governments hosting refugees and the United Nations, are formulated.

A. Cessation of human rights violations

72. The United Nations should require the Rwandese Government to put an end to the serious violations of human rights which are being perpetrated in its territory and which comprise searches, arrests, arbitrary detentions, disappearances and summary executions.

73. The United Nations should recommend the following to the Rwandese Government:

(a) The organization of wide-ranging campaigns to make the population aware of the need to respect the physical integrity and property of others, as well as to prepare for a life in common and on good terms;

(b) The adoption, as advocated in the second report of the Special Rapporteur, of forceful administrative measures designed to deter acts of reprisal and at the same time to ensure respect for fundamental rights of anyone who may commit such acts;

(c) Observance of the prerogatives and decisions of the judicial authorities, which is an essential condition for the sound administration of justice.

B. The situation of refugees

74. The United Nations should recommend that the Governments of countries hosting Rwandese refugees, and particularly the Zairian Government which has accepted the greatest number, take appropriate action to ensure that:

(a) The voluntary repatriation of refugees is effectively assured and facilitated;

(b) The refugees are not unduly influenced in one way or another - i.e., either to leave or to remain in the host country;

(c) Systematic information campaigns are organized for this purpose, so that the people concerned can take a fully informed decision;

(d) These Governments abide by their international commitments, particularly those deriving from the relevant provisions of international conventions on asylum and refugees;

(e) Their territories are not used as a base for destabilizing Rwanda or committing acts of aggression against that State.

75. The United Nations should assist in:

(a) Compensating those States for the losses they have suffered as a result of the installation of refugees and the deterioration of their crops and land;

(b) Financing refugee repatriation operations.

C. International assistance to Rwanda

76. The United Nations should formally appeal to Member States, particularly the great Powers and the African States, to provide substantial assistance for the reconstruction of the Rwandese State as a matter of urgency.

77. Such assistance, which should take various forms and be provided in all economic, political, social and cultural sectors, implies a prior overall assessment of needs.

78. In the immediate future, it appears especially urgent to provide the people concerned with food and health assistance designed to enable them to survive, as well as the means to save their crops, livestock and land and to produce the minimum needed to survive.

79. The United Nations should participate actively in this assistance operation and help to organize it. In particular, it should provide the Rwandese State with:

(a) Financial or material assistance in reconstituting the infrastructure of the administrative police, the criminal police, the gendarmerie and the judiciary;

(b) Assistance in judicial and law-enforcement personnel, including the training of policemen, gendarmes and judges, while helping local judges to render justice. In this connection, the United Nations might expand the Special Rapporteur's mandate to embrace technical assistance. Under this proposal, a specialized team of observers would be responsible for training policemen, judges, lawyers and court officers and establishing a Bar with a view to safeguarding the independence of the judiciary.

80. The United Nations should take the initiative in ensuring improved coordination of activities in Rwandese territory, - not only measures to promote human rights or humanitarian law but alwo other activities such as those involving food or military operations. Such coordination is essential in view of the large number and diversity of field activities. It would have the advantage of providing an integrated view of problems and avoiding overlapping, duplication of effort and aid waste.

81. The United Nations should, as soon as possible:

(a) Increase the number of human rights experts and their actual deployment in the field, some of them acting as observers, investigators and instructors at one and the same time;

(b) Launching the International Court which has just been set up, as well as the local courts that are to be established to try persons responsible for genocide, in order to stop, or at least reduce, acts of reprisal;

(c) Establish an appropriate legal framework to ensure the protection of widows and unaccompanied children and guarantee their fundamental rights. For this purpose, it would be appropriate to provide compensation for damage attributable to the perpetrators of massacres or their accomplices;

(d) Create an international force responsible for ensuring security in camps for refugees and displaced persons, as well as arrangements for their repatriation in appropriate conditions of security and dignity.

82. In cooperation with OAU, the United Nations should take steps to:

(a) Create conditions and a framework for a dialogue between various Rwandese political groups both inside and outside the country. This dialogue might lay the basis for a political settlement of the conflict in place of a military settlement;

(b) Convene an international conference on Rwanda designed, as initially recommended in the interim report, to induce the parties to the conflict to negotiate in good faith, taking due account of the Arusha Agreements of 4 August 1993, the conditions for peace, democratic transition, and national reconciliation and unity.

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